FILED
MAY 10 1952
CHARLES ELMORE CROPLEY
CLERK

No. 759

IN THE

Supreme Court of the United States

October Term 1951

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
ORDER OF RAILWAY CONDUCTORS, AND BROTHERHOOD
OF LOCOMOTIVE ENGINEERS,
Petitioners,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Petitioners,

v.

United States of America

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioners, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brotherhood of Locomotive Engineers, pray that a writ of certiorari issue to the United States Court of Appeals for the Sixth Circuit to review an amended preliminary injunction entered by the United States District Court for the Northern District of Ohio, Eastern Division on May 6, 1952 (R. 978-980), and now pending for review in the United States Court of Appeals for the Sixth Circuit on appeal by petitioners from the District Court.

OPINION BELOW

The opinion of the District Court (R. 659-663), was entered on April 15, 1952. It is not yet officially reported but has been unofficially reported in 29 LRRM 2681. It is set forth in full in Appendix H, *infra*, pp. 45-48.

JURISDICTION

The amended preliminary injunction of the District Court was entered on May 6, 1952 (R. 978-980). An appeal to the United States Court of Appeals for the Sixth Circuit was perfected by the filing of the record in that court on May 9, 1952. The case is now pending there without having been heard, submitted to or decided by that court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a district court may properly issue a preliminary injunction restraining a peaceful strike where the court admits that grave and substantial questions exist as to its jurisdiction to issue such an injunction in view of the Norris-La Guardia Act (29 U.S.C. 101 *et seq.*) and where the court refuses to determine that it has jurisdiction.

2. Whether the President had any inherent power under the Constitution of the United States to seize the railroads.

3. Whether the Act of August 29, 1916 (10 U.S.C. 1361) constitutes an unconstitutional delegation of powers to the executive in that it fails to prescribe any standards therefor, in violation of Article I, Sections 1 and 8 of the Constitution of the United States.

4. Whether the President has any power entitling him to suspend the operation of the collective bargaining guarantees of the Railway Labor Act (45 U.S.C. 151, *et seq.*) and the protections of the Norris-LaGuardia Act (29 U.S.C. 101, *et seq.*) by issuing executive orders which purport to seize the railroads but which neither by their terms nor by any action taken thereunder purport to make any change in law or in fact in the possession, control or operation of the railroads in any respect except that they purport to forbid the

employees from leaving work upon threat of loss of seniority rights and of imposition of other sanctions.

5. Whether under the foregoing circumstances the workers employed by the railroads are employees of the United States.

6. Whether the Railway Labor Act (45 U.S.C. 151 *et seq*) bars the issuance of an injunction in the case at bar.

7. Whether the government has any standing to seek an injunction in the case at bar.

8. Whether an injunction which requires employees to work for the private profit of the railroads upon terms to which the employees have never agreed, which have never been fixed by due process of law, and under which the employees would not voluntarily work violates the Fifth and Thirteenth Amendments to the Constitution of the United States.

9. Whether Section 305 of the Labor Management Relations Act (29 U.S.C. 288) by providing the remedy for strikes by Government employees precludes injunctive relief.

STATUTES INVOLVED

The Act of August 29, 1916 (10 U.S.C. 1361) is set forth in Appendix A, *infra*, p. 27. The pertinent provisions of the Norris-LaGuardia Act (29 U.S.C. 101, *et seq.*) are set forth in Appendix B, *infra*, p. 28. The pertinent provisions of the Railway Labor Act (45 U.S.C. 151, *et seq.*) are set forth in Appendix C, *infra*, pp. 29-31. The pertinent provisions of the Labor-Management Relations Act (29 U.S.C. 141, *et seq.*) are set forth in Appendix D, *infra*, p. 32. Executive Order No. 10141, under which the Chicago, Rock Island & Pacific Railroad Company was allegedly seized by the Secretary of the Army, is set forth in full in Appendix E, *infra*, pp. 33-36. Executive Order No. 10155, under which the other 196 railroads here involved

were allegedly seized by the Secretary of the Army, is set forth in full in Appendix F, *infra*, pp. 37-40. The form of operating agreement which the Secretary of the Army entered into with each of the railroads, is set forth in full in Appendix G, *infra*, pp. 41-44.

STATEMENT

On March 15, 1949, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen served notices under the provisions of the Railway Labor Act upon carriers whose employees are represented by those organizations of their desire to negotiate certain changes in rules and working conditions, requesting among other things, a 40 hour week with 48 hours pay for employees within the crafts they represent (R. 99, 523-524). On November 1, 1949 the Brotherhood of Locomotive Firemen and Enginemen and on January 6, 1950 the Brotherhood of Locomotive Engineers likewise served notices under the provisions of the Railway Labor Act upon carriers whose employees are represented by those organizations of their desire to negotiate certain wage increases and rules changes (R. 103-104, 459, 461, 575). At all times here relevant the three above named labor organizations, hereinafter collectively referred to as the Brotherhoods, were the collective bargaining representatives of substantially all of the approximately 150,000 persons employed by the railroads in the United States within the crafts of locomotive engineers and motormen, locomotive firemen, helpers, hostlers and hostler helpers, and conductors (R. 458-459, 520).

The carriers met the notices served by the Brotherhoods by serving counter notices stating the desires of the carriers to negotiate widespread changes in previously existing rules and working conditions (R. 19, 463-464, 525-526, 559).

All of the Brotherhoods complied with and exhausted the procedures available to them under Railway Labor Act without any agreement being reached (R. 103-107, 110-111).

Prior to the exhaustion of the machinery of the Railway Labor Act by the Brotherhoods, the Switchmen's Union of North America, A.F. of L., which itself had exhausted that machinery, on June 25, 1950, commenced a strike on the Chicago, Rock Island and Pacific Railroad (R. 92, 96, 111-112. Efforts to settle that strike having proved unsuccessful, the President of the United States on July 8, 1950 issued Executive Order No. 10141, which directed the Secretary of the Army to take certain action, hereinafter more fully described, to assure operation of that railroad (R. 5-8, 91-92; see Appendix E, *infra*, pp. 33-36).

By August 23, 1950, the Brotherhood of Railroad Trainmen and the Order of Railway Conductors had exhausted the provisions of the Railway Labor Act, an Emergency Board appointed by the President had reported on the dispute, and the thirty days subsequent to that report had expired, thus leaving those two organizations free to strike (R. 19-21, 99-101, 111). Accordingly these two organizations set a nationwide strike for August 28, 1950 (R. 21, 101). In order to avert this strike and before the strike began the President of the United States on August 25, 1950, issued Executive Order No. 10155, under the terms of which the Secretary of the Army was directed to take certain steps to secure the operation of the 196 railroads named in a list attached to the order (R. 8-18, 91-92; see Appendix F, *infra*, pp. 37-40).

Each of the foregoing executive orders begins with a recital by the President that "as a result of labor disturbances * * * it has become necessary to take possession and assume control" of the railroads therein designated. The orders then state:

> Now, therefore, by virtue of the power and authority vested in me, by the Constitution and the laws of the United States, including the act of August 29, 1916 (39 Stat. 619, 645), as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

The orders purport to vest possession and control of the railroads in the Secretary of the Army but provide that the Secretary may either operate or arrange for the operation of the railroads (Par. 2) and except as the Secretary may otherwise provide "the boards of directors, trustees, receivers, officers and employees of such carriers shall continue the operation * * * in the usual and ordinary course of business, in the names of the respective companies" (Par. 4). The orders also state that the railroads "shall be managed and operated under the terms and conditions of employment in effect" on June 24, 1950 in respect to the Rock Island and on August 20, 1950 in respect to the other roads (Par. 6).

In accordance with the permissive power vested in the Secretary of the Army either to operate or to arrange for the operation of the railroads, the Secretary of the Army in every instance elected to arrange for the operation of the roads rather than to operate them himself. Thus on July 10, 1950, two days after the alleged seizure of the Chicago, Rock Island and Pacific Railroad Company, the Army entered into a contract with the Chicago, Rock Island and Pacific Railroad Company entitled "Operating Agreement" (R. 119-122, 666-669), giving the company full operation of the railroad. Within a few days after their respective seizures, the Army entered into a similar "Operating Agreement" (R. 119-122, 669-673) with each of the other 196 carriers here involved, granting each of them the operation of its own road. These agreements specify that the Government is retaining certain limited rights of possession and control, whereas the entire operation is to be in the railroad. As to possession and control, the agreement limits such possession and control in the Army to only that necessary to prevent an interruption of transportation service. Paragraph 2 provides:

> The action of the Government in taking *possession* of said properties is not an assertion by the Government of ownership thereof, or any interest therein, it being

> understood that title to said properties remains in the owners thereof and that, during the period of their *possession and control*, the Government will assert only such rights as are necessary to accomplish the national purpose of preventing an interruption of transportation service threatened by a labor dispute.
>
> (Italics supplied)

The operating agreements not only divested the Army of any operation which it had assumed by the alleged seizure, but likewise left all possession and control in the railroads subject only to the right of the Government, in the event that a labor dispute thereafter threatened, to assume possession and control to the extent necessary to prevent an interruption of transportation.

The government did not raise any flag over the railroad properties (R. 180). It neither stationed government representatives at any of the properties nor did it appoint someone at each of the companies as an agent of the government (R. 180). The government in all respects treated the railroads as operating for their own private accounts and not for the government.

The subsequent orders issued by the Army fully bear out the above analysis. For instance, the second paragraph of General Order No. 1 (R. 128-130, 682-683) is headed:

> 2. *Operation of Transportation Systems by Existing Management*

From the date of the alleged seizure until the present time all of the instructions issued have proceeded on the premise that during the operation by the railroad management the workers continue to be employees of the carriers, rather than of the United States. Illustrative is the letter (R. 169-171, 265, 729-730) sent by the Assistant Secretary of the Army to each of the 196 railroad companies, other than the Chicago, Rock Island and Pacific Railroad Company, a few days after the effective date of the alleged seizure. It reads:

> This will further confirm telegraphic advices • • • that you are to proceed with the operation of such transportation system in the usual manner and to *continue the employment of your employees* under the terms and conditions of employment existing immediately prior to such seizure pursuant to said Executive Order.
>
> (Italics supplied)

The carriers have continued to recognize the workers as their employees. They have continued to hire and fire employees as before (R. 178). They have continued to assign them jobs and direct their work (R. 178-179). Since the alleged seizure they have entered into more than a hundred contracts with the Brotherhoods covering every aspect of the employment relationship, including contracts for the union shop and check off (R. 493-496, 619-622, 768-873, 936-952). These contracts do not contain any language which either directly or indirectly could be construed as treating the United States as the employer. The United States is not a party to any of these agreements.

The union shop contracts have in many instances contained express reference to the carrier as the employer. See for instance the contract between the Brotherhood of Locomotive Firemen and Enginemen and the Baltimore and Ohio Railroad Company (R. 494, 775). The Army, acting on the basis of a legal opinion of the Judge Advocate General, has ruled that these union shop agreements may be entered into between the carriers and the Brotherhoods, without any need for submission to or approval by the Army (R. 194-196, 728-729).

By General Order No. 2 issued February 8, 1951, the Secretary of the Army directed the carriers to give an increase of 5 cents per hour to road employees and 12½ cents per hour to yard employees (R. 130-132, 684-688). The Government did not purport to itself give the increase as it would have done had it been the employer. The Army did not bargain with the Brotherhoods about this increase. It

did not enter into any contract with the Brotherhoods providing for this increase. The size of the increase was not determined by any process affording due process of law. Apparently it was decided upon by the Secretary of the Army acting on his own initiative (R. 603-605, 606).

The Secretary of the Army appears to have regarded his direction to the carriers to give this increase as advisory. The increase of the 5 cents per hour to be given the road service employees and the 12½ cents to be given the yard service employees represented less than half of the amount of increase previously offered to the Brotherhoods by the carriers and rejected by the Brotherhoods as inadequate (R. 468-469, 603). In those instances where the carrier declined to effectuate the directed increase, the Secretary of the Army did not compel the carrier to put the increase into effect, but suggested further bargaining about the matter between the carrier and the Brotherhoods (R. 131, 167-168, 605, 727-728).

With respect to terms and conditions of employment other than wages, carriers made changes detrimental to the employees and the Secretary of the Army refused to intervene to protect the employees (R. 557-559, 919-929).

During the period of purported government seizure under Executive Orders Nos. 10141 and 10155, negotiations between the Brotherhoods and the carriers upon the notices initiated in 1949 and 1950 proceeded without any agreement being reached (R. 23-27, 103-107, 110-111). The carriers during the negotiations evidenced an adamancy which reflected the carriers' satisfaction with a situation in which they ran their own roads for their own profit but were protected by the alleged seizure from any strike to secure the employee demands for higher wages and improved conditions (R. 612). The Government refused to bargain collectively with the employees insisting they must look solely to the carriers for collective bargaining (R. 490-491, 540-555, 766-767, 902-918).

By March 9, 1952, the Brotherhoods had fully complied with the requirements of the Railway Labor Act and were free to strike (R. 19-21, 99-101, 104-108, 111-112). On that date they began a strike on the New York Central Lines west of Buffalo, New York and on the Terminal Association of St. Louis, designed to support the notices served by the organizations in 1949 and 1950 (R. 110-111, 458-459, 470-472).

On March 11, 1952, the United States filed its complaint for injunctive relief (R. 1-49) in the United States District Court for the Northern District of Ohio, Eastern Division, seeking a restraining order, preliminary injunction and permanent injunction requiring the discontinuance of the aforesaid strike, enjoining a strike on any of the other railroads under seizure and requiring a resumption of work by members of the Brotherhoods. On the same day the district court entered a temporary restraining order in the terms prayed (R. 50-52).

Pursuant to the temporary restraining order the Brotherhoods directed their members to return to work and their members did return to work (R. 598-599). The employees were required to return to work at wages to which they have never agreed and under which they would not voluntarily work save for the restraint of the court's order (R. 476-477, 601-602).

The temporary restraining order by agreement of the parties was continued in effect until April 23, 1952, in order to afford the district court ample time to conduct a hearing and consider briefs in the case (R. 53-54, 86-87).

The Brotherhoods on March 22, 1952 filed an answer (R. 60-66) to the complaint in which they assert that the Norris-LaGuardia Act (29 U.S.C. 101, *et seq*) deprived the district court of jurisdiction to issue any injunction in the case (First Defense, Pars. 1 and 2, R. 60-61). The answer alleges that the persons who went on strike were employees of the carriers and not of the United States Government either because the President had no inherent power to seize

the railroads (Second Defense, Par. 1, R. 61-62) and the Act of August 29, 1916 (10 U.S.C. 1361) is unconstitutional because of the absence therein of any standards (Second Defense, Par. 2, R. 62) or because the purported seizure was a sham and a fiction with the railroads at all times retaining full possession, control and operation (Second Defense, Par. 3, R. 62). Among other things the answer asserts that the carriers' uninterrupted receipt of all the profits gives rise to a conclusive presumption that the private employment relationship has continued at all times, for otherwise the court would have to find that government employees had been illegally utilized to earn profits for private benefit (Second Defense, Par. 4, R. 62).

The answer further alleges that the United States has no standing in court to enjoin a strike of private employees (Eighth Defense); that Section 305 of the Labor Management Relations Act (29 U.S.C. 188) provides the exclusive remedy for strikes by persons employed by the United States Government and thereby excludes the courts from jurisdiction of suits to enjoin such strikes (First Defense, Par. 5, R. 61).

The answer further alleges that the provisions of the Railway Labor Act (45 U.S.C. 151, *et seq.*) govern this case exclusively and preclude the issuance of an injunction (First Defense, Par. 3, R. 61) and that any injunction which required employees to work for the private profit of the carriers at wages to which they had never agreed, which had not been fixed by due process of law and at which the employees would not voluntarily work violated the Fifth and Thirteenth Amendments to the Constitution of the United States (Third Defense, Par. 4, R. 63-64).

A hearing upon the application of the government for a preliminary injunction was conducted on March 27, March 28, March 31, April 1, April 2, April 3 and April 4, 1952, at which evidence was received (R. 88-659). The district court also had before it and considered exhaustive briefs filed by all the parties both before and after the hearing.

On April 15, 1952, the district court handed down an opinion ruling that the issue of whether the Norris-LaGuardia Act deprived the Court of jurisdiction in the case presented "grave and substantial questions" as to the "constitutional validity of the seizure orders" and the genuineness of the government's purported seizure of the railroads (R. 659-663). The court found that the strike which had been conducted and the further strikes which might be called would inflict irreparable injury on the United States and accordingly required the issuance of a preliminary injunction irrespective of the court's jurisdiction (R. 661-663). The court accordingly declined to decide whether it had jurisdiction of the case (R. 661). In so ruling the court relied upon the concurring opinion of Mr. Justice Frankfurter in the case of *United States* v. *United Mine Workers,* 330 U.S. 258, 312. Thus the district court stated (R. 661):

> Despite the assertions of the defendants that the Court must determine that it has jurisdiction before issuing the injunction, it was clearly established by the Mine Workers case, as Mr. Justice Frankfurter pointed out in his concurring opinion, that the Court is empowered to issue the necessary order, reserving its decision on jurisdiction to a time when, after a full hearing, adequate study and reflection will be afforded to properly interpret and apply the law.

Accordingly on May 6, 1952 the district court signed amended findings and entered an amended preliminary injunction (R. 968-980). The amended findings of fact and conclusions of law contain no findings that the government is operating the plant nor that the employees involved are employees of the United States nor that the Norris-LaGuardia Act is inapplicable (R. 968-978). The amended preliminary injunction enjoins a resumption of the strike on the New York Central Lines West of Buffalo or on the Terminal Association of St. Louis or an extension of that strike to any of the other railroads named in Executive

Orders Nos. 10141 and 10155 and directs all the members of the Brotherhoods to continue normal employment (R. 978-980).

On May 7, 1952, the Brotherhoods filed a notice of appeal and on May 9, 1952, filed the record in the United States Court of Appeals for the Sixth Circuit (R. 980-981). The case has not been heard, submitted to, or decided by the Court of Appeals.

SPECIFICATION OF ERRORS TO BE URGED

1. The district court erred in granting a preliminary injunction without finding that it had jurisdiction to issue such an order.

2. The district court erred in failing to determine that the Norris-LaGuardia Act (29 U.S.C. 101, *et seq.*) deprived it of jurisdiction to issue a preliminary injunction in this case.

3. The district court erred in failing to find that the persons who went on strike were at all times employees solely of the carriers and not of the United States.

REASONS FOR GRANTING THE WRIT

1. Since March 11, 1952, the approximately 150,000 members of the Brotherhoods have respectfully observed restraining orders and preliminary injunctions issued by a district court which has such grave doubts about its jurisdiction to issue such orders that it has consistently refused to rule that it has such jurisdiction.

The restraining order in effect from March 11, 1952 to April 23, 1952 (R. 50-54, 86-87), the preliminary injunction in effect from April 23 to May 6, 1952 (R. 962-964), and the amended preliminary injunction in effect since May 6, 1952 (R. 978-980), have enjoined the Brotherhoods from conducting and their members from engaging in a peaceful strike for higher wages and improved working conditions.

The effect of these orders has been to require the approximately 150,000 engineers, firemen and conductors employed on substantially all the railroad mileage in the United States to continue to work at 1948 wages, which since the latter part of 1949 and early 1950, have ceased to be contractually binding upon these employees. Thus the effect of these orders has been to require work at wages at which the employees have not agreed to work and which have not been determined by due process of law.

These restraining orders and preliminary injunctions are expressly prohibited as beyond the jurisdiction of the court if the Norris-LaGuardia Act (29 U.S.C. 101 *et seq*) is applicable. Section 4 of that Act provides:

> Sec. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of a labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment;
>
> • • •
>
> (i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified • • •
>
> • • •

The Norris-La Guardia Act by Section 13(c) (29 U.S.C. 113(c)) provides "The term 'labor dispute' includes any controversy concerning terms or conditions of employment."

In order to determine whether it had jurisdiction to issue the preliminary injunction the district court had to determine whether the members of the Brotherhoods were employees of the United States, for this Court has held that the Norris-LaGuardia Act bars the United States from obtaining an injunction in a labor dispute involving employees of a private employer. *United States* v. *Hutcheson,*

312 U. S. 219, 227, 235; *United States* v. *American Federation of Musicians*, 318 U. S. 741, affirming 47 F. Supp. 304 (D C N D Ill. E D); *United States* v. *International Hod Carriers & Common Laborers' District Council*, 312 U. S. 539, affirming 37 F. Supp. 191 (D C N D Ill. E D). In the *Mine Workers* case all nine justices of this Court expressed the view that the Norris-LaGuardia Act barred the United States from obtaining an injunction where the workers there involved were not employees of the United States Government (330 U. S. at pp. 280, 307, 312-321, 328, 338, 343).

The Brotherhoods made such a strong showing by the presentation of evidence and the presentation of legal arguments directed to the issue of whether the workers involved were at any time employees of the United States that the district court after 7 full days of hearing evidence and several weeks of considering briefs was unable to determine that the Norris-LaGuardia Act was inapplicable.

In ruling that the district court had the power to issue a preliminary injunction although it might not have the jurisdiction so to do, the district court relied upon this Court's decision in *United States* v. *United Mine Workers*, 330 U. S. 258 (R. 661). We do not believe that this Court either intended to or did rule that a district court might properly issue preliminary injunctions barred by the express language of the Norris-LaGuardia Act. Of course, any language in any of the opinions in that case respecting the propriety of issuing restraints upon peaceful strikes was dictum because a majority of the Court there held that the Norris-LaGuardia Act was inapplicable because the workers there involved, for reasons not here present, had become employees of the United States Government and that all orders issued were within the jurisdiction of the district court. The opinion of the Court further stated (at p. 295):

> Assuming, then, that the Norris-LaGuardia Act applied to this case and prohibited injunctive relief at the request of the United States, we would set aside the preliminary injunction.

Mr. Justice Frankfurter's view that even though the district court lacked jurisdiction, its restraining order must be obeyed until reversed, certainly constitutes no approval by this Court of the practice of district courts in issuing restraining orders when they entertain serious doubts as to their jurisdiction. But here we are concerned not merely with a restraining order of a few days duration, but with a preliminary injunction issued after the taking of evidence and extended consideration of briefs. Under the Federal Rules of Civil Procedure, Rule 52 (a), the court is required in granting an interlocutory injunction to set forth the findings of fact and conclusions of law which constitute the grounds for its action. *Cf.* Section 7 of the Norris-LaGuardia Act (29 U.S.C. 107). Nor are we here concerned with a contempt of the injunction but rather with an attempt on appeal to reverse it. Every argument which favored Mr. Justice Frankfurter's view that a restraining order though issued without jurisdiction must be obeyed, even more forcefully requires that all orders issued without jurisdiction be promptly reversed and set aside. Only if there can be expeditious relief against injunctions issued without jurisdiction can employees be fairly requested to respect such orders until reversed.

This Court, by its decision in the *Mine Workers* case has led the district court here into entering an order admittedly in excess of what that court can find its jurisdiction to encompass. We therefore urge that this Court under its established practice should take this case, at once clarify the meaning of its decision in the *Mine Workers* case, and remedy the injustice imposed upon the 150,000 railroad employees by being subjected to an injunction issued by a court which so seriously doubts its jurisdiction to issue the injunction that it has refused to find that it has jurisdiction.

This Court is fully aware of the long struggle against injunctions which labor fought and believed it had won by the enactment of the Norris-LaGuardia Act. This Court also does not need to be reminded that the express references to

"temporary injunctions" which appear repeatedly in that Act (Sections 1, 4, 5, 7, 9, and 10) reflected the fact that the "government by injunction" which Congress meant to abolish was usually accomplished by temporary rather than permanent injunctions. This Court and the Courts of Appeals have accordingly always been prompt in reversing any preliminary injunction issued without jurisdiction. Indeed, the district courts themselves in all cases except the instant one have held they could not issue a preliminary injunction unless they first determined that they had jurisdiction. *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria & Western R. Co.*, 321 U. S. 50, reversing, 132 F. 2d 265 (C. A. 7); *United States* v. *American Federation of Musicians*, 318 U. S. 741, affirming 47 F. Supp. 304 (D. C. N. D. Ill. E. D.); *Third Avenue Transit Corp.* v. *Quill*, 192 F. 2d 971 (C. A. 2); *Blankenship* v. *Kurfman*, 96 F. 2d 450 (C. A. 7).

2. The issues which the District Court deemed so "grave and substantial" as to justify in its opinion, a deferring of a ruling on jurisdiction (R. 661) are, we submit, issues which should be decided by this Court. As the District Court listed them the first of these was the "challenge of the constitutional validity of the seizure orders". The second of these is whether a "seizure as a fact has been accomplished", or whether it is "a mere token or sham seizure" (R. 660).

The issue of the constitutional power of the President of the United States to seize private industry in cases of labor disputes is now pending before this Court in *Youngstown Sheet and Tube Co.* v. *Sawyer*, No. 744, this term, and *Sawyer* v. *Youngstown Sheet and Tube Co.*, No. 745, this term.

In those cases it is the employers who have come into the courts to protect their rights to bargain collectively and to determine for themselves, instead of having it determined for them by the executive branch of the Government, what wages they shall pay and what the conditions of work of their employees shall be. The steel companies there assert

that the seizures irreparably injure their bargaining position and threaten to take their property and reduce its value by giving unjustified wage increases and other economic benefits to employees.

In the case at bar it is the employees who assert that the seizure of the railroads has deprived them of any bargaining power and taken their property and given it unjustifiedly to the carriers by coercing them to work for the private profit of the carriers at wages lower than they have agreed to work under and at which they would not voluntarily work but for the compulsion of the executive and judicial branches of the Government (R. 476-477, 601-602, 612, Answer, Third and Tenth Defenses, R. 62-64, 65).

In the steel cases the President threatened to use the seizure to put into effect changes in wages and terms of employment beneficial to the employees and to which the employers had never agreed. In the instant cases the President has used the seizure of the railroads to maintain the 1948 scale of wages and terms of employment to the great profit of the carriers—a profit of more than a billion six hundred and sixty million dollars ($1,660,000,000) after taxes during the period of Government seizure (Counterclaim and Cross-Claim, Par. 8, R. 78). But in the railroad case it is the employees, rather than the employers, who have not agreed to work at the wages and under the conditions which the President is forcing them to work under.

We agree with the steel companies that the President is not vested by the Constitution of the United States with any power to seize the steel companies for the purpose of paying the steel workers out of the steel companies money, wages to which the steel companies have never agreed. We think it is equally clear that the President is not vested by the Constitution of the United States with any power to seize the railroads for the purpose of profiting the carriers out of the employees labor by compelling the employees to work at wages to which they have never agreed and at which they would not voluntarily work for the private profit of the carriers.

The assumption of the President that either the steel companies could bargain collectively with the United Steel Workers or that the railway Brotherhoods could bargain collectively with the carriers in view of the terms of the seizure orders, shows a complete misunderstanding of the nature of collective bargaining. This Court has recognized that true collective bargaining can take place only when both employer and the employees' representatives retain full power to back up their bargaining demands by the exercise of economic sanctions. *International Union* v. *O'Brien*, 339 U. S. 454; *Amalgamated Assn.* v. *Wisconsin Board*, 340 U. S. 383. In the latter case in holding unconstitutional the Wisconsin Public Utility Anti-Strike Law because it deprived employees of the right to strike and thereby deprived them of their right to bargain collectively, the Court quoted with approval an excerpt from a speech of Senator Taft made during the debates on the Taft-Hartley Act, in which he stated that Government seizure was incompatible with collective bargaining (340 U. S. at p. 395, N. 21, quoting from 93 Cong. Rec. 3835):

> Basically, I feel that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on *free collective bargaining* • • • that *means that we recognize a freedom to strike* when the question is the improvement of wages, hours and working conditions, when a contract has expired and neither side is bound by a contract.
> • • •
>
> We have considered the question whether the right to strike can be modified. I think it can be modified in cases which do not involve the basic question of wages, hours and working conditions. But if we impose compulsory arbitration, or if we give the Government power to fix wages at which men must work for another year or for two years to come, I do not see how in the end we can escape a collective economy • • •
>
> • • • • •

> If we begin with public utilities, it will be said that coal and steel are just as important as public utilities. I do not know where we could draw the line. So far as the bill is concerned, *we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining.* We have done nothing to outlaw strikes for basic wages, hours and working conditions after proper opportunity for mediation.
>
> • • • • •
>
> We did not feel that we should put into the law, as a part of the collective bargaining machinery, an ultimate resort to compulsory arbitration, or to *seizure,* or to any other action. We feel that it *would interfere with the whole process of collective bargaining.* If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and it will back out of collective bargaining.
>
> (Italics supplied)

The Railway Labor Act (45 U. S. C. 151, *et seq.*) guarantees collective bargaining to the railroad employees to the same extent as the Taft-Hartley Act guarantees collective bargaining to employers. There can also be no doubt but what the President's purported seizure of the railroads with his prohibition of any strikes thereon deprived employees of any effective collective bargaining. The National Mediation Board in its Sixteenth Annual Report (1951) noted (p. 7):

> the employees express a deep concern that the employer has operated under a feeling of assurance that they would be protected by the Government against any use of their economic power, and that such feeling has operated to make negotiations an empty gesture.

The testimony in the case at bar was to the same effect (Tr. 919-920).

3. In issuing Executive Orders Nos. 10141 and 10155, the President purported to act both under his inherent consti-

tutional powers and under the Act of August 29, 1916 (39 Stat. 619, 645). This statute consists of one sentence inserted in an appropriation bill. It reads as follows:

> The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

In its answer the Brotherhoods alleged that the foregoing statute constitutes an unconstitutional delegation of powers to the executive in that it fails to prescribe any standards therefor, in violation of Article I, Sections 1 and 8 of the Constitution of the United States (Second Defense, Par. 2, R. 62). See *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 415-430; *Schechter* v. *United States*, 295 U. S. 495, 529-542.

While the President relied in part upon this Act in seizing possession of the railroads during the first World War, the legality of this seizure was in serious question and Congress hastened to pass legislation properly delegating functions and prescribing standards. The President proclaimed the seizure on December 26, 1917. By March 21, 1918, Congress had enacted and the President had signed an elaborate Federal Control Act prescribing in full all the incidents of the taking and the manner in which the railroads were to be operated. Appropriate governmental machinery for fixing rates of pay, hours and working conditions was established. The profits went into the United States Treasury. For references to the statutes and executive orders thereunder see "Federal Control of Public Utilities," 4 A.L.R. 1680; supplemented in 8 A.L.R. 875; 10 A.L.R. 970; 11 A.L.R. 1453; 14 A.L.R. 234; 19 A.L.R. 678; 52 A.L.R. 296.

Similarly with respect to the seizures made during World War II. Congress, by the War Labor Disputes Act (50 USCA App. 1503) and by Section 9 of the Selective Service Act, (50 USCA App. 309), granted the President power to take possession of certain properties to the extent, under the circumstances and for the purpose therein prescribed. Section 5 of the War Labor Disputes Act (50 USCA App. 1505) provided the method by which changes in wages, hours and working conditions were to be made during the period of government operation. This was by application to the National War Labor Board which after hearings and investigation was empowered to establish changes to be observed by the Government during its period of operation.

We submit that the Act of August 29, 1916 is unconstitutional and affords no valid basis for Executive Orders Nos. 10141 and 10155.

4. The preliminary injunction issued by the District Court cannot be upheld without passing upon the serious constitutional questions raised by the lack of standards in the Act of August 29, 1916 and by the President's reliance upon inherent constitutional powers. The preliminary injunction may however be reversed and the District Court may be directed to dismiss the case without this Court's passing on the constitutional questions should it sustain the Brotherhood's contention that the Government has never in fact or in law assumed possession, control or operation of the railroads (Second Defense, Par 3, R. 62). In this respect the purported "seizure" of the railroads differed materially from the seizure of the steel companies. A comparison of the respective executive orders themselves shows many important differences. Likewise, the Government purported to actually take possession and operate the steel plants, placing the United States flag over the properties and designating one officer at each company as a representative of the Government. The Government never purported to take actual possession of the railroads nor to operate them. No flag

was flown (R. 180). No one at the companies was designated as a Government representative (R. 180). On the contrary the Secretary of the Army made agreements with the carriers providing for operation of the railroads for the carriers' private accounts. (Appendix G, *infra*, pp. 41-44). The railroads continued to be operated by the same persons in exactly the same fashion as they had been before. In the steel seizure the Government not only purported to operate the plants but also undertook to substitute itself for the private employer in dealing with those matters which were formerly the subject of collective bargaining. In the case of the railroads the Government has refused to bargain collectively with the Brotherhoods and instead has insisted that the employees look solely to the carriers for any improvement in wages, hours or working conditions (R. 490-491, 540-555, 766-767, 902-918).

In the foregoing respects the purported seizure of the railroads also differs from the seizure of the coal mines involved in *United States* v. *United Mine Workers*, 330 U.S. 258 where at page 287, this Court stated:

> It is descriptive of the situation to state that the Government, in order to maintain production and to accomplish the purposes of the seizure, has substituted itself for the private employer in dealing with those matters which formerly were the subject of collective bargaining between the union and the operators. The defendants by their conduct have given practical recognition to this fact. The union negotiated a collective agreement with the Government and has made use of the procedures provided by the War Labor Disputes Act to modify its terms and conditions.

In the instant case the Government refused to substitute itself as the employer in dealing with employees with respect to any matters. Judged either by the common law test of control of the physical manner of doing the work or by more modern tests of economic relationships, the railroad workers remained employees solely of the carriers and not

of the United States Government. *N.L.R.B.* v. *E. C. Atkins,* 331 U.S. 398, 411-412; *Powell* v. *United States Cartridge Co.,* 339 U.S. 497, 506-507; *Buckstaff Bath House Co.* v. *McKinley,* 308, U. S. 358; *Terminal Railroad Association of St. Louis* v. *Fitzjohn,* 165 F. 2d 473 (C.A. 8).

The Government has failed to show that the purported seizure of the railroads had any effect either legally or factually other than to deprive employees of their right to strike. When the purported seizure orders (Appendix E and F, *infra,* pp. 33-40) are lined up with the operating agreements (Appendix G, *infra,* pp. 41-44) and the evidence respecting the conduct of the respective parties thereunder is considered, it will be seen that the only object which the Government sought to accomplish was to prevent a strike. It tried to accomplish this without assuming any of the obligations of an employer and without affording the employees any substitute for their loss of bargaining power. When the legal verbiage is cleared away, all that is left is the effort of the President to suspend the operation of the Norris-La Guardia Act (29 U.S.C. 101 *et seq.*) and the Railway Labor Act (45 U.S.C. 151 *et seq.*). The executive has no more constitutional power to suspend the operation of laws of Congress than he has to seize private property.

5. The instant case presents the further issue as to what right the executive branch has to apply to the judicial branch for injunctive relief. No statute of Congress authorizes the Government to seek an injunction in a situation such as is here presented. This Court has recently ruled that in the absence of statutory authorization the courts will not recognize a right in the United States to sue for damages for losses inflicted upon it through tortious injury of a soldier. *United States* v. *Standard Oil Co.,* 332 U.S. 301, 314-317. On the same theory, the United States has no standing to sue here. In the absence of legislation the United States could not recover damages from the Brotherhoods. It has no greater standing to obtain an injunction irrespective of

whether it is the employer and irrespective of the Norris-La Guardia Act.

Aside from some obiter dictum in the much discredited *Debs* case, 158 U.S. 564, 599-600, the government in the District Court was unable to cite any decisions by this Court which would sustain its standing to sue. The trial court in *Re Debs,* 64 Fed. 724, 745 (C.C.N.D. Ill.) relied wholly on the Sherman Act as authorizing the United States to enjoin the conspiracy to restrain commerce there proved to exist. While the decision in the Supreme Court in the *Debs* case contains much broad language, it is otherwise the undoubted law that absent specific Congressional authority, the Attorney General has no power to go into court to protect the general welfare or even the flow of commerce. No such right is conferred on the executive department by the Constitution.

The *Mine Workers* case in no way establishes that the United States in the case at bar has any standing to sue. In the *Mine Workers* case the United States came into court to seek a declaration of its rights under the contract with the United Mine Workers of America (330 U.S. at pp. 265-266). The United States, like any other party to a contract, may resort to the courts for its enforcement. The Government in the case at bar does not bring itself within any of the established bases for resort to a court of equity, even if the Norris-LaGuardia Act did not operate to deprive this Court of jurisdiction.

CONCLUSION

The preliminary injunction should be reversed. Its issuance by a court which declined to find it had jurisdiction constitutes such an abuse of the judicial process as to call for immediate correction by this Court. This is particularly true in view of the serious and far-reaching detrimental effect of that injunction in rendering 150,000 railroad employees helpless to improve their wages and working conditions.

This case deserves consideration by this Court for the further reason that it presents grave and substantial constitutional questions, which are already pending before this Court for decision as presented from the viewpoint of the employers and the Government in *Youngstown Sheet and Tube Co.* v. *Sawyer*, No. 744, this Term, and companion case. The close relationship of these cases makes it important that the railway workers, who for almost two years have suffered deprivation of their rights to collective bargaining by reason of a presidential seizure of the railroads, be heard on the issues before a decision is rendered which may constitute a precedent applicable to them.

It is therefore respectfully submitted that the petition for a writ of certiorari should be issued to the United States Court of Appeals for the Sixth Circuit bringing here for review the preliminary injunction issued by the District Court and that this Court should reverse that preliminary injunction and direct a dismissal of the complaint.

Respectfully submitted,

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May 9, 1952.

APPENDIX A

The Act of August 29, 1916 (10 U.S.C. 1361) provides:

The President, in time of war, is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same, to the exclusion as far as may be necessary of all other traffic thereon, for the transfer or transportation of troops, war material and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

APPENDIX B

Section 4 of the Norris-LaGuardia Act (29 U.S.C. 104) provides in part:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

* * * * * * *

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

APPENDIX C

The Railway Labor Act (45 U.S.C. 151 *et seq*) provides in part:

* * * * * * *

Sec. 2 * * * *

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

* * * * * *

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing.

* * * * * *

Sec. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

* * * * * *

Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

* * * * * *

Sec. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: Provided, however, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall

be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation. • • •

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

APPENDIX D

Section 305 of the Labor Management Relations Act (29 U.S.C. 141, *et seq*) provides:

"It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency."

APPENDIX E

Executive Order

No. 10141

POSSESSION, CONTROL AND OPERATION OF THE TRANSPORTATION SYSTEM OF THE CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

WHEREAS I find that as a result of labor disturbance there are interruptions, and threatened interruptions, of the operations of the transportation system owned or operated by the Chicago, Rock Island & Pacific Railroad Company; that it has become necessary to take possession and assume control of the said transportation system for purposes that are needful or desirable in connection with the present emergency; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure in the national interest the operation of the said transportation system.

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and the laws of the United States, including the act of August 29, 1916, 39 Stat. 619, 645, as President of the United States and Commander in Chief of the Armed forces of the United States, it is hereby ordered as follows:

1. Possession, control, and operation of the transportation system owned or operated by the Chicago, Rock Island & Pacific Railroad Company (hereinafter referred to as the company) are hereby taken and assumed, through the Secretary of the Army (hereinafter referred to as the Secretary) as of four o'clock, Eastern Standard Time, July 8, 1950; but such possession and control shall be limited to real and personal property and other assets used or useful in connection with the operation of the said transportation system.

2. The Secretary is directed to operate or to arrange for the operation of, the transportation system taken pursuant to this order in such manner as he deems necessary to assure to the fullest possible extent continuous and uninterrupted transportation service.

3. In carrying out the provisions of this order the Secretary may act through or with the aid of such public or private instrumentalities or persons as he may designate, and may delegate such of his authority as he may deem necessary or desirable. The Secretary may issue such general and special orders, rules, and regulations as may be necessary or appropriate for carrying out the provisions, and to accomplish the purposes, of this order. All Federal agencies shall comply with the orders of the Secretary issued pursuant to this order and shall cooperate to the fullest extent of their authority with the Secretary in carrying out the provisions of this order.

4. The Secretary shall permit the management of the company to continue its managerial functions to the maximum degree possible consistent with the purposes of this order. Except so far as the Secretary shall from time to time otherwise provide by appropriate order or regulation, the board of directors, officers, and employees of the company shall continue the operation of the said transportation system, including the collection and disbursement of funds thereof, in the usual and ordinary course of the business of the company, in the name of the company, and by means of any agencies, associations, or other instrumentalities now utilized by the company.

5. Except so far as the Secretary shall from time to time otherwise determine and provide by appropriate order or regulation, existing contracts and agreements to which the company is a party shall remain in full force and effect. Nothing in this order shall have the effect of suspending or releasing any obligation owed to the company, and all payments of such obligations shall be made to the company by the persons obligated to the company. Except as the Secretary may otherwise direct, there may be made, in due course, payments of dividends on stock and of principal, interest, sinking funds, and all other distributions upon bonds, debentures, and other obligations; and expenditures may be made for other ordinary corporate purposes.

6. Until further order of the President or the Secretary, the said transportation system shall be managed and operated under the terms and conditions of employment in effect on June 24, 1950, without prejudice to existing equities or to the effectiveness of such retroactive provisions as may

be included in the final settlement of the dispute between the company and the workers. The Secretary shall recognize the right of the workers to continue their membership in labor organizations, to bargain collectively through representatives of their own choosing with the representatives of the company, subject to the provisions of applicable law, as to disputes between the company and the workers; and to engage in concerted activities for the purpose of such collective bargaining or for other mutual aid or protection, provided that in his opinion such concerted activities do not interfere with the operation of the transportation system taken hereunder.

7. Except as this order otherwise provides and except as the Secretary may otherwise direct, the operation of the transportation system taken hereunder shall be in conformity with the Interstate Commerce Acts, as amended, the Railway Labor Act, as amended, the Safety Appliance Act, the Employers' Liability Acts, and other applicable Federal and State Laws, Executive orders, local ordinances, and rules and regulations issued pursuant to such laws, Executive orders, and ordinances.

8. Except with the prior written consent of the Secretary, no receivership, reorganization, or similar proceeding affecting the company shall be instituted; and no attachment by mesne process, garnishment, execution, or otherwise shall be levied on or against any of the real or personal property or other assets of the company.

9. The Secretary is authorized to furnish protection for persons employed or seeking employment in or with the transportation system of which possession is taken hereunder; to furnish protection for such transportation system; and to furnish equipment, manpower, and other facilities or services deemed necessary to carry out the provisions, and to accomplish the purposes, of this order.

10. From and after four o'clock, Eastern Standard Time, on the eighth day of July, 1950, all properties under this order shall be conclusively deemed to be within the possession and control of the United States without further act or notice.

11. Possession, control, and operation of the transportation system, or any part thereof, or of any real or personal

property taken under this order shall be terminated by the Secretary when he determines that such possession, control, and operation are no longer necessary to carry out the provisions, and to accomplish the purpose, of this order.

HARRY S. TRUMAN

THE WHITE HOUSE

July 8, 1950

APPENDIX F

Executive Order

Number 10155

POSSESSION, CONTROL, AND OPERATION OF CERTAIN RAILROADS

WHEREAS, I find that as a result of labor disturbances there are interruptions, and threatened interruptions, of the operations of the transportation systems owned or operated by the carriers by railroad named in the list attached hereto and made a part hereof; that it has become necessary to take possession and assume control of the said transportation systems for purposes that are needful or desirable in connection with the present emergency; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure in the national interest the operation of the said transportation systems:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and the laws of the United States, including the act of August 29, 1916, 39 Stat. 619, 645, as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

1. Possession, control, and operation of the transportation systems owned or operated by the carriers by railroad named in the list attached hereto and hereby made a part hereof are hereby taken and assumed, through the Secretary of the Army (hereinafter referred to as the Secretary), as of 4 o'clock PM Eastern Standard Time, August 27, 1950; but such possession and control shall be limited to real and personal property and other assets used or useful in connection with the operation of the transportation systems of the said carriers. If and when the Secretary finds it necessary or appropriate for carrying out the purposes of this order, he may, by appropriate order, take possession and assume control of all or any part of any transportation system of any other carrier by railroad located in the continental United States.

2. The Secretary is directed to operate, or to arrange for the operation of, the transportation systems taken under, or which may be taken pursuant to, this order in such

manner as he deems necessary to assure to the fullest possible extent continuous and uninterrupted transportation service.

3. In carrying out the provisions of this order the Secretary may act through or with the aid of such public or private instrumentalities or persons as he may designate, and may delegate such of his authority as he may deem necessary or desirable. The Secretary may issue such general and special orders, rules, and regulations as may be necessary or appropriate for carrying out the provisions, and to accomplish the purposes, of this order. All Federal agencies shall comply with the orders of the Secretary issued pursuant to this order and shall cooperate to the fullest extent of their authority with the Secretary in carrying out the provisions of this order.

4. The Secretary shall permit the management of carriers whose transportation systems have been taken under, or which may be taken pursuant to, the provisions of this order to continue their respective managerial functions to the maximum degree possible consistent with the purposes of this order. Except so far as the Secretary shall from time to time otherwise provide by appropriate order or regulation, the boards of directors, trustees, receivers, officers, and employees of such carriers shall continue the operation of the said transportation systems, including the collection and disbursement of funds thereof, in the usual and ordinary course of the business of the carriers, in the names of their respective companies, and by means of any agencies, associations, or other instrumentalities now utilized by the carriers.

5. Except so far as the Secretary shall from time to time otherwise determine and provide by appropriate orders or regulations, existing contracts and agreements to which carriers whose transportation systems have been taken under, or which may be taken pursuant to, the provisions of this order are parties, shall remain in full force and effect. Nothing in this order shall have the effect of suspending or releasing any obligation owed to any carrier affected hereby, and all payments shall be made by the persons obligated to the carrier to which they are or may become due. Except as the Secretary may otherwise direct, there may be made, in due course, payments of dividends

on stock, and of principal, interest, sinking funds, and all other distributions upon bonds, debentures, and other obligations; and expenditures may be made for other ordinary corporate purposes.

6. Until further order of the President or the Secretary, the said transportation systems shall be managed and operated under the terms and conditions of employment in effect on August 20, 1950, without prejudice to existing equities or to the effectiveness of such retroactive provisions as may be included in the final settlement of the disputes between the carriers and the workers. The Secretary shall recognize the right of the workers to continue their membership in labor organizations, to bargain collectively through representatives of their own choosing with the representatives of the owners of the carriers, subject to the provisions of applicable law, as to disputes between the carriers and the workers; and to engage in concerted activities for the purpose of such collective bargaining or for other mutual aid or protection, provided that in his opinion such concerted activities do not interfere with the operation of the transportation systems taken hereunder, or which may be taken pursuant hereto.

7. Except as this order otherwise provides and except as the Secretary may otherwise direct, the operation of the transportation systems taken hereunder, or which may be taken pursuant hereto, shall be in conformity with the Interstate Commerce Act, as amended, the Railway Labor Act, as amended, the Safety Appliance Acts, the Employers' Liability Acts, and other applicable Federal and State laws, Executive orders, local ordinances, and rules and regulations issued pursuant to such laws, Executive orders, and ordinances.

8. Except with the prior written consent of the Secretary, no receivership, reorganization, or similar proceeding affecting any carrier whose transportation system is taken hereunder, or which may be taken pursuant hereto, shall be instituted; and no attachment by mesne process, garnishment, execution, or otherwise shall be levied on or against any of the real or personal property or other assets of any such carrier; provided that nothing herein shall prevent or require approval by the Secretary of any action authorized or required by any interlocutory or final decree of any

United States court in reorganization proceedings now pending under the Bankruptcy Act or in any equity receivership cases now pending.

9. The Secretary is authorized to furnish protection for persons employed or seeking employment in or with the transportation systems of which possession is taken hereunder, or which may be taken pursuant hereto; to furnish protection for such transportation systems; and to furnish equipment, manpower, and other facilities or services deemed necessary to carry out the provisions and to accomplish the purposes of this order.

10. From and after 4 o'clock PM Eastern Standard Time on the said 27th day of August 1950, all properties taken under, or which may be taken pursuant to, this order shall be conclusively deemed to be within the possession and control of the United States without further act or notice.

11. Possession, control, and operation of any transportation system, or any part thereof, or of any real or personal property taken under, or which may be taken pursuant to, this order shall be terminated by the Secretary when he determines that such possession, control, and operation are no longer necessary to carry out the provisions and to accomplish the purposes of this order.

s/ Harry S. Truman

THE WHITE HOUSE,
August 25, 1950.

APPENDIX G

Operating Agreement

THIS AGREEMENT made this.....day of....., 19.....; between the United States of America (hereinafter called the "Government") and..... Company, a corporation duly organized under the laws of the State(s) of..... hereinafter called the "Company").

WITNESSETH THAT:

WHEREAS, under Executive Order of the President of the United States, dated the 25th day of August, 1950, the Secretary of the Army took possession and control as of 4 o'clock P.M. on the 27th day of August, 1950, of the transportation systems owned or operated by the carriers by railroad named in the list attached to said Executive Order, and

WHEREAS, possession and control of the transportation system of the Company was taken by the Secretary of the Army pursuant to said Executive Order, and to the extent provided therein,

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. During the period of Government possession and control of its properties or any part thereof, the Company will assume full financial responsibility for the operation of said properties and will retain all the income or proceeds resulting from such operation and will pay all operating expenses and related costs other than the compensation and expenses of personnel of the Department of the Army.

2. In taking possession and control of said properties the Government did not and does not hereby assume any obligation existing at the time of taking possession or which will result from operation thereof pursuant to the terms of this agreement. The action of the Government in taking possession of said properties is not an assertion by the Government of ownership thereof, or any interest therein, it being understood that title to said properties remains in the owners thereof and that, during the period of their possession and control, the Government will assert only

such rights as are necessary to accomplish the national purpose of preventing an interruption of transportation service threatened by a labor dispute.

3. The Company, except as provided in paragraph 4 below, hereby agrees, that it will execute an instrument releasing the Government and its authorized representatives from all claims by or on behalf of the Company arising by reason of the possession and control of properties of the Company by the Government. Such release shall be executed and delivered to the Secretary of the Army or his duly designated representative by the Company within thirty days after termination of this agreement in accordance with the provisions of paragraph 8 hereof. The Company further agrees to hold the Government and its authorized representatives harmless with respect to any claims of or liabilities to third parties arising out of acts performed during the period of such possession and control in carrying out the aforesaid Executive Order; but this indemnity shall not be applicable to claims or liabilities asserted by third parties arising out of acts involuntarily performed by the Company upon the direction or order to it of the Secretary of the Army or of any of his duly authorized representatives.

4. The provisions of paragraph 3 hereof are subject to the condition that the release provided for in said paragraph shall except any claim for losses, costs, damages, or expenses alleged to have been suffered by the Company as a result of any particular direction, order, or action of the Secretary of the Army or his duly authorized representatives in carrying out the aforesaid Executive Order, provided notice of any such claim is given by the Company in conformity with paragraph 5 hereof. The Company reserves all rights it may have to make and prosecute and to have determined any such claim either under existing law or under such legislation as Congress may provide for this purpose. Such exception will be included in the instrument of release referred to in paragraph 3 and shall:

a. Specify the particular direction or order of the Secretary of the Army or of his duly authorized representatives which the Company asserts resulted in damages to it.

b. Specify the particular action taken pursuant to such direction or order, which action would not have been taken except for such direction or order, and which the Company asserts resulted in damages to it.

c. Specify the nature of the damages asserted to have been so caused and an estimate of the amount of compensation claimed therefor.

5. Notice of any such claim shall be given to the Secretary of the Army, or to such representative as he may designate for this purpose, by registered mail or telegram within fifteen days after the Company shall have received official advice of the particular direction, order, or action upon which the claim is based, unless the time for filing such notice of claim shall be extended, for good cause shown, by the Secretary of the Army or by his authorized representatives. Such notice shall specify the particular direction, order or action which, or compliance with which, the Company asserts has resulted or will result in damage to it, and the nature of such damage, and will advise that the Company intends to include a claim for damages resulting therefrom as an exception to the release to be executed by it pursuant to this agreement.

6. The delivery to the Secretary of the Army, or to such representative as may be designated by him for this purpose, of the instrument of release provided for in paragraph 3 hereof, with or without any exception as provided for in paragraph 4, shall be deemed to constitute a waiver by the Government of all rights which it may have to an accounting with respect to all operations during the period of Government possession and control, expressly reserving the right, however, to the Government to assert by way of offset to any claimed liability, special and direct benefits resulting to the Company from Government possession and control, and any other defense the Government may have against any asserted liability, and with further reservation to the Government of the right to require further detailed information with respect to any claim of the Company covered by an exception included in said instrument of release.

7. The Company agrees that it will notify the Secretary of the Army at least fifteen (15) days prior to making any

disposition of assets which would substantially impair its working capital or interfere with continued provision of its transportation service or before making any major change in its policy with respect to the manner in which its normal operations are conducted.

8. This agreement shall be subject to termination by either of the parties by delivery of written notice, in the case of the Government to Assistant Secretary of the Army (General Management) Department of the Army, Washington, D. C., and in the case of the Company, to.....
....., Termination will not become effective until ten days after the receipt of such notice. From and after the effective date of such termination of this agreement by notice, possession and control continuing, the relationship and rights between the parties with respect to the period following such termination shall be the same as if possession and control had been taken and assumed as of the effective date of such termination. Unless previously terminated by such notice, this agreement shall terminate upon relinquishment of possession and control of the properties of the Company by the Government. Termination shall not affect any right or claim arising under the agreement prior to the effective date of such termination.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By.....
(Official Title)

.....
(Company)

By.....

APPENDIX H

UNITED STATES OF AMERICA,
Plaintiff,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS, AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Defendants.

CIVIL ACTION NO. 28926

FREED, J.:

The nature of the judicial inquiry at this stage of the proceedings is limited in its scope. The application for a preliminary injunction is addressed to the discretion of the Court and seeks to maintain the status quo until such time as the cause may be heard on the merits and the rights of the parties finally determined. It imposes upon this Court the duty merely to determine these problems: Does the controversy involve grave and substantial questions of law and fact and does the defendants' conduct present an immediate threat of irreparable injury to the United States. An examination of the adjudicated cases discloses that the courts have uniformly agreed with this view. It must be clearly understood that the Court is not now called upon to render an ultimate decision as to the Government's right to a permanent injunction to prevent a strike by the defendants.

The United States Government appeals to this Court to issue a preliminary injunction to prevent the three unions of railroad employees from associating and participating in a strike against the Terminal Railroad Association of St. Louis and that portion of the New York Central rail system which runs west of Buffalo, New York. The Government's complaint is predicated upon Executive Orders Nos. 10141 and 10155 issued by the President on July 8 and August 29 of 1950 respectively. They order the seizure by the United States Government of the operation of a substantial number of the railroads of this country. It is alleged that by virtue of the Executive Orders and the action of the Department of the Army pursuant to the Orders a strike by the employees of these railroads is a strike against the United States of America.

The defendants challenge the constitutional validity of the seizure orders. The unions deny that seizure as a fact has been accomplished. They assert that it is a mere token or sham seizure and urge that the railroad workers are not, therefore, employees of the United States Government. The jurisdiction of the Court to enjoin the strike whether the workers be Government employees or private civilian employees is also controverted. It is urged that the issuance of an injunction in the manner sought would violate the 5th and 13th Amendments of the Constitution. The unions are inviting this Court to distinguish or disagree with the holding of the Supreme Court in the case of the United States v. United Mine Workers.

The mere recital of the issues just outlined amply demonstrates that grave and substantial questions are inherent in the cause. Despite the assertions of the defendants that the Court must determine that it has jurisdiction before issuing the injunction, it was clearly established by the Mine Workers case, as Mr. Justice Frankfurter pointed out in his concurring opinion, that the Court is empowered to issue the necessary order, reserving its decision of jurisdiction to a time when, after a full hearing, adequate study and reflection will be afforded to properly interpret and apply the law.

The Court's attention must, therefore, be directed to a consideration of the damage or injury which would be suffered by the United States if the threatened strike be permitted to exist unrestrained until such time as the rights of the parties to this litigation, to the extent that it is the province of the Court, may ultimately be adjudicated.

As the Court observed when the temporary restraining order was issued, a large or substantial section of the transportation system, such as the New York Central Railroad constitutes a part of the life line of our nation's existence. The entire testimony compels the Court to conclude that a stoppage on this line and the tie up of the St. Louis Terminal would have far reaching and incurably detrimental effect on the security of the United States. It is no answer that alternative routes and other modes of transportation are available to bridge the gap as has been done or may be done in times of flood or other disaster. Such occurrences merely demonstrate the accomplishments of American ingenuity. It may be taken for granted that the substantial area of the United States served by the New

York Central Railroad Company and the St. Louis Terminal Railroad Association would not live in a vacuum insofar as transportation is concerned were these two railroad facilities suspended. The question is not whether re-routing or diverting the traffic may possibly be accomplished, but rather would the burden of requiring shippers to overcome the loss of these services and facilities irreparably injure the interests of the United States.

The Government offered as Exhibit No. 16 the strike instructions issued by the unions which among numerous others contained the following provisions:

> "In inaugurating the strike it is contemplated that it will be limited for the present to railroads to be duly designated.
>
> "General chairmen and officers of divisions and lodges on all railroads, parties to the several national movements, are hereby alerted to the possibility that the strike may be extended to include their railroads, and it is therefore urged that they make all necessary preparations in anticipation of such developments.
>
> "The instructions and general information contained in this circular are intended to apply not only on the several railroads first to become actually engaged in the strike, but shall govern on every other railroad to which the strike may be later extended. It is therefore suggested that those receiving this circular should thoroughly familiarize themselves with its contents and retain it for their guidance."

From these instructions it is self-evident that eventual spread of the strike was contemplated if a strike on the New York Central and St. Louis Terminal proved ineffective. That the intended work stoppage very probably would cripple the economy and defense effort of the United States is crystal clear in view of these instructions.

While it is true that these same instructions provide that the strike should not interfere with the handling of *finished* war materials, the testimony offered by the Government convinces the Court that the instructions, even if conscientiously obeyed, would be insufficient. No provision is made for handling the substantial number of less than carload shipments of finished materials. The separation and handling of such shipments would be a practical impossibility.

Nor is the continual movement of the innumerable raw materials so manifestly essential to defense production assured by the defendants. It cannot be doubted as asserted by the Government, that guns, tanks and aircraft are not the only ingredients essential to the establishment of an impenetrable defense and the prosecution of our undertaking in Korea. Many aspects of the civilian economy of this nation are so integrated with our military efforts that their impairment may adversely affect our safety.

The harm which defendants charge will result to the unions and their members as a result of the delay to be here imposed cannot compare with or outweigh the gravity of the threatened injury to the safety and welfare of all the people.

This Court is compelled to observe that injunction is not the solution to the dispute over wages and working conditions which has existed for a period of three years. That the burden of resolving the differences should be imposed on the courts is not contemplated in the law. The courts must not and should not be used as instruments to impel collective bargaining in good faith. The duty rests with the Government, the railroads and the unions involved. It is apparent, however, that the court must in the interest of the national safety exercise its power to prevent irreparable injury.

Regardless where the sympathy of the Court might be in the dispute, the clear mandate of the law must govern its decision. But one conclusion may be reached under the law: The interests, safety and security of the United States would be grievously impaired and immediate and irreparable injury would be inflicted if a preliminary injunction were not issued to be effective until such time as this Court is called upon to determine finally the complex issues presented and the ultimate rights of the parties. A prompt and complete hearing is essential. To attain that end the Court will be prepared with the cooperation of the parties to expedite a final hearing.

A preliminary injunction will issue, the Government will submit proposed findings of fact and conclusions of law and a proposed order in accordance with the Rules of this Court.

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 759

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS, AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The action filed by the United States in the District Court to enjoin the defendant Brotherhoods from striking was predicated upon (1) the strike which had been called by the Brotherhoods, and (2) the fact that the United States had taken possession of the railroads and was operating them pursuant to Executive Orders 10155 and 10141. *Cf. United States* v. *United Mine Workers,* 330 U. S. 258. A restraining order and preliminary

injunction against the strike have been entered by the District Court. Petitioners are seeking reversal of the temporary injunction in this Court before hearing in the Court of Appeals.

On May 21, 1952, after the filing of the petition for a writ of certiorari, the wage dispute between petitioners and the carriers was settled, and new contracts running for sixteen months were thereafter signed. New York Times, May 24, 1952, p. 1, col. 3. Thus the labor dispute which gave rise to the strike enjoined by the order under review has come to an end. Recurrence of the acts enjoined within a reasonably definite time is improbable, especially since the new contracts will not expire before the fall of 1953. Moreover, as will appear from the orders attached hereto, on May 23, 1952, the United States relinquished possession, control, and operation of the railroads, so that they are now restored to private ownership.

Since the acts complained of have been abandoned with no likelihood of recurrence and the basis for the Government's suit has disappeared, the Government would have dismissed its complaint in the District Court if the petition for certiorari had not been filed. The circumstances related above demonstrate that there is no longer any controversy, that the case has become moot (*Walling* v. *Shenandoah-Dives Mining Co.*, 134 F. 2d 395, 397–398 (C. A. 10); cf. *Walling* v. *Hel-*

merich & Payne, 323 U. S. 37, 43; *McComb* v. *Wyandotte Furniture Co.,* 169 F. 2d 766, 770 (C. A. 8), and that the District Court no longer has jurisdiction to entertain the suit.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari be denied with leave to the United States to move to dismiss the proceedings in the District Court, or, in the alternative, that the petition for a writ of certiorari be granted and the case remanded to the District Court with directions to vacate its order and to dismiss the proceedings upon the ground that the cause is moot (*Securities and Exchange Commission* v. *Harrison,* 340 U. S. 908).

PHILIP B. PERLMAN,
Solicitor General.

JUNE 1952.

APPENDIX A

The Honorable
THE SECRETARY OF THE ARMY,
Washington 25, D. C.

DEAR MR. SECRETARY: The labor difficulties underlying the issuance of Executive Order No. 10141 dated 8 July 1950 and Executive Order No. 10155 dated 25 August 1950 have now been settled and interruptions in normal rail service no longer threaten.

It is, accordingly, in order for you to initiate immediate steps for the termination of possession, control and operation of the transportation systems affected by the above mentioned Executive Orders to become effective at the earliest feasible moment.

Yours very truly,

HARRY S. TRUMAN.

APPENDIX B

ORDER OF THE SECRETARY OF THE ARMY TERMINATING GOVERNMENT CONTROL OF THE RAILROADS

Pursuant to the provisions of Executive Order No. 10141, dated 8 July 1950 and Executive Order No. 10155, dated 25 August 1950, I hereby determine that continued possession, control and operation by the United States of the transportation systems taken and assumed by or pursuant to those orders, are no longer necessary to carry out the provisions and to accomplish the purpose of said Executive Orders; and it is hereby ordered, that:

1. Possession, control and operation by the United States of all the transportation systems, taken or assumed by or pursuant to either of said Executive Orders including all the real and personal property and other assets taken or assumed in connection therewith, are hereby terminated and relinquished as of 4 o'clock P. M., EDT, 23 May 1952. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. All claims and rights which the United States may have to an accounting with respect to the operation of the carriers during the period of Government possession, control and operation are hereby waived and released as to each carrier the possession and control of any of whose properties were taken pursuant to either of said Exec-

utive Orders, conditioned upon the execution and delivery by the carrier to the United States of an instrument in the form approved by the Secretary of the Army indemnifying and saving harmless the United States, its officers, agents, and employees, against liability to third parties arising out of or in connection with said possession, control and operation and agreeing to assume the defense of any such parties in any action or claim arising out of or in connection with such possession, control and operation, and releasing and discharging the United States, its officers, agents, and employees from all claims by or on behalf of the carrier, which have been, or otherwise might in the future be, asserted arising out of or in connection with the possession, control and operation of its properties by the United States, its officers, agents, and employees during said period.

3. The right of the United States to such an accounting is hereby expressly reserved as to any carrier which fails to execute and deliver such instrument of indemnification and release or which otherwise asserts or reserves any claim against the United States, its officers, agents, or employees arising out of or in connection with said possession, operation, and control, except as may otherwise have been provided by an "operating agreement" heretofore executed between the Government and the carrier concerned covering their respective rights and obligations during the period of Government possession, control and operation. In lieu of the instrument of indemnification and release provided in paragraph 2 hereto, any carrier may elect to execute an in-

strument of indemnification and release with exceptions and limitations as provided in such "operating agreement". Should any carrier elect to execute and deliver an instrument of release and indemnification with any exceptions or limitations as provided in such operating agreement, such instrument shall be in the form approved by the Secretary of the Army and shall not be accepted on behalf of the Government as a compliance with the terms of such agreement until approved by the Secretary of the Army.

FRANK PACE, JR.,
Secretary of the Army.

APPENDIX C

Message.

DEPARTMENT OF THE ARMY
STAFF COMMUNICATIONS OFFICE

Priority (Book MSG).
(Addressed Separately).

To: All Railroad Presidents, Trustees, or General Managers of Rail Transportation systems Seized Pursuant to Executive Order 10141, Dated 8 July 1950, and Executive Order 10155, Dated 25 August 1950.

Info: Regional Directors, and Commanding Generals of the Continental Armies.

NR: DA 330578 23 May 52.
Official from Bendetson.

Department of The Army possession, operation and control of the rail transportation system owned by your company terminates this date at 4:00 o'clock P. M. Eastern Daylight Time. Confirmation order and essential documents mailed this date.

(8)

U. S. GOVERNMENT PRINTING OFFICE: 1952

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 759

Office-Supreme Court, U. S.
FILED
JUN 7 1952
CHARLES ELMORE CROPLEY

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS, AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS,

Petitioners

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

The United States of America has asserted in its memorandum that the labor dispute between petitioners and all of the railroad companies seized under Executive Order [illegible]

v.

UNITED STATES OF AMERICA

REPLY BRIEF FOR PETITIONERS

The United States of America has asserted in its memorandum that the labor dispute between petitioners and all of the railroad companies seized under Executive Orders Nos. 10141 and 10155 has been settled. Such is not the case. Several railroads which were subjected to government seizure were not represented by the carriers' conference committees which negotiated the recent settlement with petitioners. Petitioners still have pending on those railroads unsettled labor disputes which arose out of notices served by petitioners similar to the ones disposed of in the settlement. In the event the remaining and continuing controversies are not separately settled between the several involved railroads and petitioners, and an interruption to commerce is threatened, there may arise the necessity in the mind of the executive department to again seize the involved railroad properties. For these reasons petitioners feel that the controversy cannot be said to be moot.

There are additional reasons which petitioners urge militate against the dismissal of this cause on the ground that the settlement of the underlying labor dispute renders the controversy moot. Authoritative appellate review on this question of railroad employees' right to strike is of the greatest importance to the petitioners, to the thousands of railroad employees they represent, to public officials, and to the public. When the District Court issued its injunction, the petitioners had but one logical course to follow and that course was to obey the injunction, continue their negotiations with the railroads, and simultaneously strive for

appellate review to determine the rights of the petitioners in the immediate and future disputes. To refuse to continue negotiations until appellate review was had would have been risky, unfair to their membership already embittered by unsatisfactory negotiations of three years' duration, and against the public interest.

There is present here a strong probability of renewed controversy, arising out of disputes between railway labor organizations and even those railroads parties to the recent settlement, for bargaining between the petitioners and the railroads, on an individual railroad or on a nationwide basis, is a constantly recurring process under the Railway Labor Act, and many times a strike is threatened or an actual strike occurs before disputes are resolved. As a result of labor controversies the government seized the railroads of the nation in 1943, 1946, and 1948. Never have the railroad labor organizations had the opportunity to secure an appellate review that would for once and for all determine the questions we have urged this court to consider and which are raised in our petition for a writ of certiorari. A vigorous but unsuccessful attempt to secure such a review was made by two of the petitioners here in 1948.

Because of the settlement of the underlying labor dispute, the Court of Appeals for the District of Columbia Circuit then held the controversy moot and a petition for a writ of certiorari filed in this court was denied. United States v. Brotherhood of Locomotive Engineers, 79 F. Supp. 485, dismissed as moot 174 F. 2d 160, certiorari denied 338 U. S. 872. (See also United States v. Switchmen's Union, 97 F. Supp. 97, which was dismissed after filing of the notice of appeal because the underlying labor dispute had been settled). The argument was then made by petitioners in that case that a similar situation was likely to arise. It did arise just two years later and it requires no

versy, arising out of disputes between railway labor organizations and even those railroads parties to the recent settlement, for bargaining between the petitioners and the railroads, on an individual railroad or on a nationwide basis, is a constantly recurring process under the Railway Labor Act, and many times a strike is threatened or an actual strike occurs before disputes are resolved. As a result of labor controversies the government seized the railroads of the nation in 1943, 1946, and 1948. Never have the railroad labor organizations had the opportunity to secure an appellate review that would for once and for all determine the questions we have urged this court to consider and which are raised in our petition for a writ of certiorari. A vigorous but unsuccessful attempt to secure such a review was made by two of the petitioners here in 1948.

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Goodyear Co., 304 U. S. 257.

Where matters of public interest are involved the principle discussed in the preceding paragraph is particularly applicable. This court and the lower federal courts have consistently held that a case will not be considered moot if public questions are involved which require determination to serve as a guide to public officials in future similar matters. United States v. Freight Assn., 166 U. S. 290, 307-310; Gay Union Corporation v. Wallace, 71 App. D. C. 382, 385, 112 F. 2d. 192, 195, cert. denied 310 U. S. 647; Boise City Irr. & Land Co. v. Clark, 131 Fed. 415, 419 (C.C.A. 9); Walling v. Haile Gold Mines, 136 F. 2d 102, 105 (C.C.A. 4); Walling v. Mutual Wholesale Food & Supply Co., 141 F. 2d 331, 335 (C.C.A. 8); Howard v. Wilbur, 156 F. 2d 884, 885 (C.C.A. 6). The instant case squarely meets this test.

The petition for a writ of certiorari ought to be granted and the questions presented therein decided by this court.

Respectfully submitted,

~~Clifford D. O'Brien~~

Harold C. Heiss

Charles W. Phillips

V. C. Shuttleworth

Counsel for Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and ~~Brotherhood of Locomotive Engineers~~, Petitioners.

June 7, 1952.

THIS PAGE BOUND

No. 759. BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN ET AL. *v.* UNITED STATES. On petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit. *Per Curiam:* The petition for writ of certiorari is granted. The orders of the District Court are vacated and the case is remanded to that court with directions to dismiss the complaint upon the ground that the cause is moot. *Clifford D. O'Brien, Ruth Weyand, Harold C. Heiss, Charles W. Phillips* and *V. C. Shuttleworth* for petitioners. *Solicitor General Perlman* for the United States.